

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 01-33243

DECON & RECOVERY SERVICES
OF OAK RIDGE, LLC
a/k/a DRS

Debtor

JOHN P. NEWTON, JR., Trustee for the
Bankruptcy Estate of Decon & Recovery
Services of Oak Ridge, LLC, Debtor

Plaintiff

v.

Adv. Proc. No. 02-3031

UNITED STATES DEPARTMENT
OF ENERGY

Defendant

**MEMORANDUM ON
DEFENDANT'S MOTION TO DISMISS**

APPEARANCES: BAILEY, ROBERTS & BAILEY, PLLC
Robert M. Bailey, Esq.
Post Office Box 2189
Knoxville, Tennessee 37901
WALKER & WALKER, P.C.
John A. Walker, Jr., Esq.
Post Office Box 2774
Knoxville, Tennessee 37901
Attorneys for Plaintiff

HARRY S. MATTICE, JR., ESQ.
UNITED STATES ATTORNEY
Pamela G. Steele, Esq.
Howard H. Baker, Jr. United States Courthouse
800 Market Street, Suite 211
Knoxville, Tennessee 37902
S. SHEA LUNA, ESQ.
UNITED STATES DEPARTMENT OF ENERGY
Office of Chief Counsel
Oak Ridge Operations Office
200 Administration Road
Oak Ridge, Tennessee 37831
Attorneys for Defendant

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

Before the court is the Defendant's Motion to Dismiss, filed on March 15, 2002, requesting dismissal of the Plaintiff's breach of contract Complaint on jurisdictional and sovereign immunity grounds.

Section 106 of the Bankruptcy Code provides for a limited waiver of governmental immunity. See 11 U.S.C.A. § 106 (West Supp. 2001). The Plaintiff contends that immunity has been waived in this adversary proceeding pursuant to § 106(a), which provides in material part that the court may determine controversies relating to turnover of property by governmental entities. See 11 U.S.C.A. § 542(a), (b) (West 1993) (mandating turnover of property of the estate, including debts). This argument fails, however, because § 542 is a basis for abrogation of sovereign immunity only in situations where the purported debt has already been reduced to judgment. See *William Ross, Inc. v. Biehn Constr., Inc. (In re William Ross, Inc.)*, 199 B.R. 551, 554 (Bankr. W.D. Pa. 1996); see also *Tri County Home Health Servs., Inc. v. United States Dep't of Health & Human Servs. (In re Tri County Home Health Servs., Inc.)*, 230 B.R. 106, 112 n.2 (Bankr. W.D. Tenn. 1999) ("[A]s a matter of law, [disputed contract] funds cannot be subject to turnover.").

The present Complaint seeks solely a judgment for heretofore unliquidated damages. Accordingly, § 542 is not yet implicated in this proceeding and cannot be a basis for waiver of the Defendant's sovereign immunity. See *id.* The Plaintiff suggests no other avenue by which waiver has occurred.¹

¹ For example, the Defendant has not filed a proof of claim in the Debtor's case. See 11 U.S.C.A. § 106(b).

For the above reasons, the Plaintiff's Complaint filed February 8, 2002, will be dismissed.

An appropriate order will be entered.

FILED: May 14, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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UNITED STATES DEPARTMENT
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Defendant

ORDER

For the reasons stated in the Memorandum on Defendant's Motion to Dismiss filed this date, the court directs that the Defendant's Motion to Dismiss filed on March 15, 2002, is GRANTED. The Plaintiff's Complaint filed February 8, 2002, is DISMISSED.

SO ORDERED.

ENTER: May 14, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE